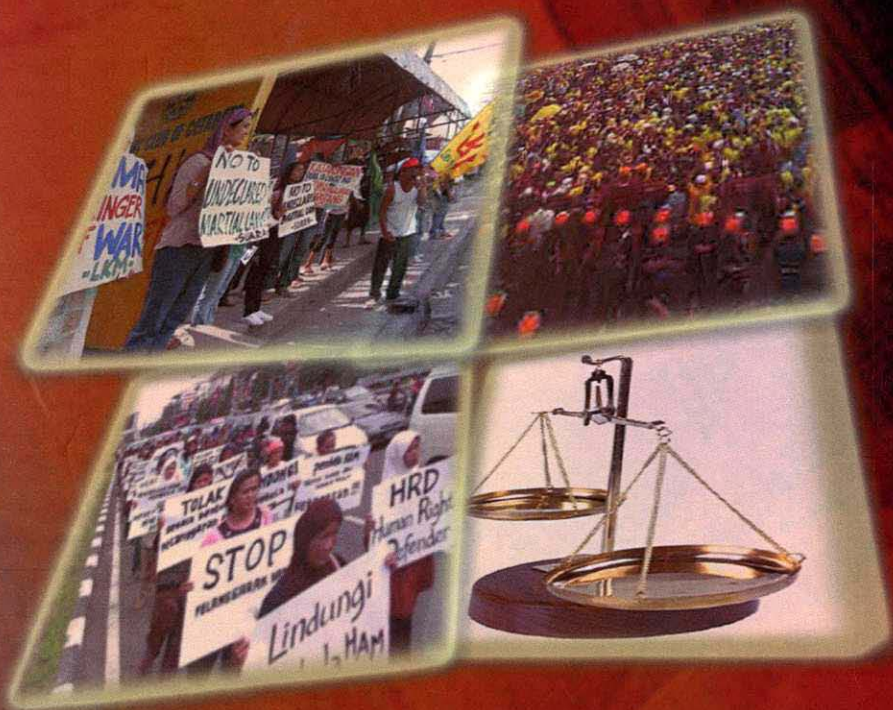


CONSTITUTIONAL LAW AND HUMAN RIGHTS IN MALAYSIA

Selected Issues



KHAIRIL AZMIN MOKHTAR

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INTERNATIONAL ISLAMIC UNIVERSITY MALAYSIA



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Introduction

Access to justice and equality before the law are hallmarks of a just legal system. These concepts are interrelated. Equality before the law cannot exist without equal access to the courts for the adjudication of disputes. Equal access is not possible when it costs money and the financial resources of litigants vary widely. Access to legal aid for poor litigants is restricted. So in practice, equal access to justice is just one more legal fiction among others. The ordinary litigant needs professional help to guide him through the maze of legal procedures. Professional services cost substantial sums of money. This is a painful reality when a person detained by a public authority without trial tries to apply to court to release him; he has to spend a substantial amount of money to claim his fundamental freedom of liberty. As far as the writer knows, only one judge in Malaysia has encouraged constitutional litigation but at the expense of the claimant, even though in the particular case his claim was successful. However, some other courts in common law jurisdictions have mitigated the plight of the poor litigant in public interest litigation by ordering special a category of costs called a Protective Costs Order (PCO) to reduce his liability for adversarial costs or to exempt him totally. This procedure has been adopted in Britain, Australia, South Africa and Canada. Canadian courts have adopted the most sympathetic attitude towards public interest litigants. A special area of public interest litigation has also received particular